

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum: Final Results of
Countervailing Duty Administrative Review: Certain In-shell
Pistachios from the Islamic Republic of Iran

SUMMARY:

We have analyzed the comments of interested parties in the final results of the above-mentioned countervailing duty (CVD) administrative review covering the period of review (POR) January 1, 2004, through December 31, 2004. The "Analysis of Programs" section below describes the decisions made in this review. Also below is the "Analysis of Comments" section, which contains the Department of Commerce's (the Department's) response to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this review for which we received comments from parties.

Comment 1: Combination Rate
Comment 2: Additional Subsidy Programs

I. Methodology and Background Information

Use of Facts Available

During the course of this proceeding, we have sought information from the company subject to this review, Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima), and from the Government of Iran (GOI) pertaining to countervailable subsidy programs in Iran and their use by Nima and Nima's growers and producers. Specifically, we have asked for information concerning Nima's and its growers' usage of the following programs:

Provision of Fertilizer and Machinery, Provision of Credit, Tax Exemptions, Provision of Water and Irrigation Equipment, Technical Support, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods, Program to Improve Quality of Exports of Dried Fruit, Iranian Export Guarantee Fund, GOI Grants and Loans to Pistachio Farmers, and Crop Insurance for Pistachios. See pages II-3 through II-8 and pages III-6 through III-11 of the Department's June 8, 2005, questionnaire. In addition, we have requested information concerning Nima's total sales and its sales of subject merchandise during the POR. See pages III-3 through III-6 of the Department's June 8, 2005, questionnaire.

Section 776(a) of the Tariff Act of 1930, as amended (the Act), requires the use of facts otherwise available on the record when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, by failing to respond to our questionnaire, Nima and the GOI have failed to provide information regarding these programs, as well as Nima's sales, in the manner explicitly requested by the Department. Therefore, we must resort to the facts otherwise available.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that by not providing necessary information specifically requested by the Department, the GOI and Nima have failed to cooperate to the best of their ability. Therefore, in selecting from among the facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from (1) the petition, a final determination in a countervailing duty or an antidumping investigation, any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (2) any other information placed on the record. See section 776(b) of the Act and 19 CFR 351.308(c). Thus, in applying adverse facts available, we have used information from Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-shell Pistachios from Iran, 51 FR 8344 (March 11, 1986) (In-shell Pistachios); Certain In-Shell Pistachios and Certain Roasted In-Shell Pistachios from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews, 68 FR 4997 (January 31, 2003) (Pistachios New Shipper Reviews); and Certain In-shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review, 70 FR 54027 (September 13, 2005) (2003 In-shell Pistachios).

If the Department relies on secondary information (e.g., data from a petition) as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal.¹ The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. See also 19 CFR 351.308(d) (describing the corroboration of secondary information).

¹ The Statement of Administrative Action accompanying the URAA clarifies that information from the petition is "secondary information." See Statement of Administrative Action, URAA, H. Doc. No. 316, Vol. 1, 103d Cong. (1994) (SAA) at 870.

Thus, in those instances in which it determines to apply adverse facts available, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the evidence relied upon in previous segments of this proceeding.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. See Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained which contradicts the relevance of the benefit data relied upon in previous segments of this proceeding. Thus, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

II. Analysis of Programs

On February 22, 2006, in the preliminary results of this review, because the GOI and Nima did not provide the information necessary to conduct an analysis of the programs under review, we made an adverse inference that each of the programs continued to exist, was countervailable, and conferred a benefit upon Nima during the POR. See Certain In-shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review, 71 FR 9091 (February 22, 2006) (Preliminary Results). No new information or evidence has been provided by respondents to warrant a change to our Preliminary Results.

The parties have commented on our Preliminary Results. However, we have not been persuaded by the parties' arguments to make changes to these final results. Therefore, for the purposes of these final results, we continue to find, based on adverse inferences, that each of the programs listed below exists, is countervailable, and conferred a benefit upon Nima and or/its grower(s) and supplier(s) during the POR.

A. Provision of Fertilizer and Machinery

In In-shell Pistachios, 51 FR at 8345-6, the Department found that growers, processors or exporters of pistachios in Iran can obtain fertilizer and machinery from the GOI at preferential prices.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in In-shell Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 7.11 percent ad valorem.

B. Provision of Credit

In In-shell Pistachios, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department found that agricultural cooperatives in Iran make credit available on terms inconsistent with commercial considerations from funds provided by the GOI to their members. See 51 FR at 8346.

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in In-shell Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 7.11 percent ad valorem.

C. Tax Exemptions

____ In In-shell Pistachios, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that farmers benefit from legislation that exempts farmers and livestock breeders from paying taxes, provided they follow government agricultural guidelines. See 51 FR at 8346.

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in In-shell Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 7.11 percent ad valorem.

D. Provision of Water and Irrigation Equipment

____ In In-shell Pistachios, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that pistachio growers in Iran may benefit from the construction of soil dams, flood barriers, canals, and other irrigation projects undertaken by the government to increase agricultural production. See 51 FR at 8346.

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in In-shell Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 7.11 percent ad valorem.

E. Technical Support

In In-shell Pistachios, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that pistachio growers in Iran receive technical support as part of the GOI’s program to support agricultural development, and that this technical support included research projects to improve cultivation techniques, as well as assistance in harvesting, marketing, and the use of fertilizer. See 51 FR at 8346.

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in In-shell Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 7.11 percent ad valorem.

F. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods

In the Pistachios New Shipper Reviews, we found that there was sufficient information on the record to suggest that duties and levies paid in connection with the importation of intermediate materials used in the production of the exported commodities and goods are refunded to exporters, pursuant to the Third Five Year Development Plan (TFYDP) enacted by the GOI. See the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in the Pistachios New Shipper Reviews, and thus was not among the programs addressed in In-shell Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net

subsidy rate of 7.11 percent, the highest rate established for an industry-wide program in In-shell Pistachios, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 7.11 percent ad valorem.

G. Program to Improve Quality of Exports of Dried Fruit

_____ In the Pistachios New Shipper Reviews, we found that there was sufficient information on the record to suggest that pursuant to the Budget Act of 2001 - 2002, the GOI provides financial assistance to exporters of dried fruit and pistachios to assist them in the production of export quality goods. See the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in the Pistachios New Shipper Reviews, and thus was not among the programs addressed in In-shell Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11 percent, the highest rate established for an industry-wide program in In-shell Pistachios, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 7.11 percent ad valorem.

H. Iranian Export Guarantee Fund

In 2003 In-shell Pistachios, we found that petitioners had provided sufficient evidence to support their allegation that the GOI pays a “prize” in the form of an export subsidy to exporters; these prizes are payable commensurate with the added value of export goods and services. See the October 27, 2004, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in 2003 In-shell Pistachios, and thus was not among the programs addressed in In-shell Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11 percent, the highest rate established for an industry-wide program in In-shell Pistachios, is the only available information on the record and is therefore, as adverse facts available, the

appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 7.11 percent ad valorem.

I. GOI Grants and Loans to Pistachio Farmers

In 2003 In-shell Pistachios, we found that petitioners had provided sufficient evidence to support their allegation that the GOI's Foreign Exchange Reserve Account Board of Trustees agreed to provide both a grant of \$100,000,000 and a \$50,000,000 buyer's credit to Iranian pistachio cooperatives and pistachio farmers. See the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in 2003 In-shell Pistachios, and thus was not among the programs addressed in In-shell Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11 percent, the highest rate established for an industry-wide program in In-shell Pistachios, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 7.11 percent ad valorem.

J. Crop Insurance for Pistachios

In 2003 In-shell Pistachios, we found that petitioners had provided sufficient evidence to support their allegation that the GOI established the Iranian Agricultural Product Insurance Act (IAPIA), whereby the Agricultural Bank will insure agricultural produce as a means of achieving the goals and policies of the agricultural sector and that the GOI aids farmers in securing insurance premiums at less than market value. See the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in 2003 In-shell Pistachios, and thus was not among the programs addressed in In-shell Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11 percent, the highest rate established for an industry-wide program in In-shell Pistachios, is the only available information on the record and is therefore, as adverse facts available, the

appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 7.11 percent ad valorem.

III. Total Ad Valorem Rate

The total net subsidy rate for Nima for the review period 2004 is 71.10 percent ad valorem.

IV. Analysis of Comments

Comment 1: Combination Rate

In their case brief, the petitioners, members of the California Pistachios Commission (CPC), assert that the Department should apply a combination rate of 71.10 percent ad valorem, the rate calculated by the Department in the Preliminary Results, to all in-shell pistachios exported by Nima and produced by any known growers of pistachios in Iran. In all other cases, argues the CPC, the Department should apply the “All Others” rate of 99.52 percent ad valorem to all subject merchandise exported by Nima. The CPC maintains that while the Department’s decision to apply adverse facts available due to the failure of Nima and the GOI to respond to the Department’s questionnaire is in conformance with the applicable statute and regulations, that failure on the part of respondents requires the Department to apply the “All Others” rate of 99.52 percent to Nima’s sales.

The CPC argues that in order to apply a combination rate under 19 CFR 351.107(b), the identity of the producer or producers must be known. However, in the instant review, because the GOI and Nima failed to respond to the Department’s questionnaire, the identity of the producer or producers that supplied the subject merchandise which Nima exported to the United States during the POR is not on the record.

The CPC maintains that 19 CFR 351.107(b) suggests that the Department establish a combination rate only for the in-shell pistachios exported by Nima and grown by a known supplier. The “All Others” rate of 99.52 percent would apply to all other in-shell pistachios exported by Nima and supplied by companies whose identities are not known. The CPC maintains that in the event that the producer is not a known supplier, *i.e.*, a “new supplier,” 19 CFR 351.107(b)(2) requires the Department to apply the “All Others” rate.

The CPC argues that, alternatively, if the Department is unable to identify the producer of the in-shell pistachios that Nima exported to the United States during the POR, the Department should look to 19 CFR 351.107(c)(1) for guidance. That section of the regulations states that, where the producer is not identified, if the Secretary has not established previously a non-combination rate for the exporter, the Secretary may instruct U.S. Customs and Border Protection (CBP) to apply as the cash deposit rate the higher of:

- (i) the highest of any combination cash deposit rate established for the exporter under paragraph (b)(1)(i) of this section;
- (ii) the highest cash deposit established for any producer other than a producer for which the Secretary established a combination rate involving the exporter in question under paragraph (b)(1)(i) of this section; or

- (iii) the “all-others rate” described in section 705(c)(5) or section 735(c)(5), of the Act, as the case may be.

The CPC maintains that the Department should instruct CBP to apply, as the cash deposit rate for all in-shell pistachios exported by Nima, the “All Others” rate of 99.52 percent ad valorem because that rate is the highest rate available under any circumstances and because the Department has not established a non-combination rate for Nima.

Respondents did not submit a case or rebuttal brief.

The Department’s Position:

We disagree with the CPC that we should apply the “All Others” rate of 99.52 percent ad valorem to all in-shell pistachios exported by Nima, where the growers are not known. In their March 31, 2005, request for administrative review of in-shell pistachios for the calendar year 2004 POR, the CPC requested a review of Nima and “all of the growers and processors of the raw pistachios that Nima sold in the United States during the period of review.” The CPC did not specify any particular growers in their request for review. As explained above in the “Methodology and Background Information” section, neither Nima nor the GOI responded to our questionnaire. Nima is the exporter but not the producer of subject merchandise; however, there is no information on the record of the instant review indicating which grower or processor Nima used during the POR.

As explained above in the “Use of Facts Available” section, because Nima and the GOI did not cooperate to the best of their abilities, we are applying an adverse inference when calculating the net subsidy rate for Nima. The rate we have calculated for Nima and its growers/processors for the POR is 71.10 percent ad valorem. We disagree with the CPC that we must apply the “All Others” rate of 99.52 percent ad valorem because Nima and the GOI failed to respond to our requests for information. Although neither Nima nor the GOI responded to our requests for information, we know from previous reviews of this order that several programs found in the original investigation have been terminated or are not countervailable. The rate of 99.52 percent ad valorem does not accurately reflect those changes. In applying adverse facts available, section 776(c) of the Act requires the Department to corroborate secondary information used as adverse facts available. To be considered corroborated, information must be found to be both reliable and relevant. We cannot corroborate countervailable rates on programs that no longer exist, because for purposes of that program, any rate selected would no longer be relevant. On the other hand, the rate of 71.10 percent ad valorem accurately reflects the termination of programs in Iran since the investigation, is still an adverse facts available rate, and can be corroborated pursuant to section 776(c) of the Act.

Moreover, we disagree with the CPC that we are obligated by 19 CFR 351.107(c)(1) to apply the “All Others” rate to all in-shell pistachios exported by Nima. Section 351.107(c)(1) states that where the producer is not identified and if the Secretary has not established previously a non-combination rate for the exporter, the Secretary may instruct CBP to apply as the cash deposit rate the “All Others” rate. However, as explained above, we do have the discretion to apply another rate, should we determine that a particular rate is inappropriate and/or cannot be corroborated pursuant to section 776(c) of the Act. Therefore, we are applying the rate calculated

at the Preliminary Results, 71.10 percent ad valorem, which is an adverse facts available rate which can be corroborated.

Comment 2: Additional Subsidy Programs

A domestic interested party, Cal Pure Pistachios, Inc. (Cal Pure), in its case brief, argues that in calculating the adverse facts available rate for Nima in the Preliminary Results, the Department inadvertently overlooked two additional subsidy programs that it had previously found to confer countervailable benefits on producers of the subject merchandise: the price supports program and the foreign exchange retention program.

Cal Pure argues that, in the original investigation of in-shell pistachios, in addition to the ten programs included and found countervailable in the Preliminary Results, the Department also found the preferential exchange rate program, the foreign exchange rate retention scheme, and the price support program to be countervailable. See In-shell Pistachios, 51 FR at 8345-46.

Cal Pure asserts that, in the past new shipper review of this order, the Department found that the price support program was not countervailable because at verification it had reviewed legislation implementing the Second Five-Year Plan, which confirmed that pistachios were not among the products that benefitted from this program. See Pistachios New Shipper Reviews at Comment 5. Cal Pure argues that the finding in Pistachios New Shipper Reviews, however, does not allow the Department to disregard this program in the instant review because the current POR falls within the period of the TFYDP, for which respondent parties have not provided any information. As such, argues Cal Pure, the Department must apply adverse facts available in determining the countervailability of this program and assign a rate of 7.11 percent ad valorem to this program.

Moreover, Cal Pure argues that in the underlying investigation the Department found that exporters benefitted from a foreign currency retention scheme, and the program rate applied to this program was 46.86 percent ad valorem. Cal Pure argues that one element of this program permitted exporters to import goods for resale in Iran at whatever price the market would bear. See In-shell Pistachios, 51 FR at 8345. Because respondents have not provided any information on the record of the instant review concerning this program, Cal Pure maintains that the Department must resort to the use of adverse facts available and apply the rate determined in the original investigation to this program.

Cal Pure argues that the Department must adjust the adverse facts available rate it applied in the Preliminary Results to include the price supports and foreign exchange retention programs. Cal Pure maintains that, taking into account the two additional programs, the correct adverse facts available rate is 125.07 percent, not 71.10 percent, ad valorem.

Respondents did not submit a case or rebuttal brief.

The Department's Position:

We disagree with Cal Pure that we inadvertently failed to include the price supports and foreign exchange retention programs in our adverse facts available rate in the Preliminary Results. As Cal Pure has correctly pointed out, in the Pistachios New Shipper Reviews, we determined, based on documentation collected from the GOI at verification demonstrating that

the pistachio industry was not included among the commodities to which price supports applied, that the price supports program does not provide benefits to the pistachio industry, and, therefore, is not countervailable. See Pistachios New Shipper Reviews at Comment 5. It is the Department's longstanding practice not to reexamine the countervailability of a subsidy program in subsequent segments of the proceeding, absent new information on the record.² In the instant review, Cal Pure has provided no new evidence to warrant a change from our prior finding that the price support program is not countervailable. Furthermore, Cal Pure has not offered any additional information that pistachios growers who were not beneficiaries of the Second Five-Year Plan became beneficiaries under the Third Five-Year Plan. Therefore, we continue to find that the price supports program is not countervailable.

Moreover, with respect to the foreign currency retention scheme, also called the foreign exchange retention scheme, we determined in the original investigation that, although we had no way of knowing whether pistachio exporters in Iran were benefitting from this program, as best information available, exporters used the program during the period of investigation (POI). See In-shell Pistachios, 51 FR 8345. We stated in the investigation that one component of this program allowed pistachio exporters to sell retained foreign exchange earned from export sales at the free market rate to anyone in Iran in need of foreign currency. Moreover, we stated that there is a significant difference between the free market U.S. dollar/Iranian rial exchange rate.

Since the time of the original investigation, however, we have learned via publicly available sources that Iran's exchange rate system was unified in March 2002. See Certain In-shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review, 68 FR 41310 (July 11, 2003), and the accompanying Issues and Decision Memorandum at Comment 2 (2001 In-shell Pistachios). See also Pistachios New Shipper Reviews at Comment 13. Based on this fact, we have found that the basis for benefits deriving from exchange rate differentials in Iran has been eliminated.

There is no evidence on the record to suggest that the foreign currency retention scheme is still in effect in Iran or that it was used by respondents during the POR. Cal Pure itself states in its case brief that it does not dispute the Department's finding in the Pistachios New Shipper Reviews that the dual exchange rate system in Iran has been eliminated. It is the Department's longstanding practice not to reexamine the countervailability of a subsidy program in subsequent segments of the proceeding, absent new information on the record. In the instant review, Cal Pure has provided no new evidence to warrant a change from our prior finding that the exchange rate system in Iran has been unified, and therefore, the foreign currency retention scheme is not countervailable. Therefore, we are not adjusting the adverse facts available rate for these final results to include the foreign currency retention scheme.

² See e.g., Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 69 FR 40869 (July 7, 2004), and the accompanying Issues and Decision Memorandum at Comment 5.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree

Disagree

David M. Spooner
Assistant Secretary
for Import Administration

Date